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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,266	10/09/2001	Howard N. Cannon	00-351	6180

7590 02/10/2004

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EXAMINER

ILAN, RUTH

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,266

Applicant(s)

CANNON ET AL.

Examiner

Ruth Ilan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,8-12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The sufficiency of the declaration filed under 37 CFR 1.132 is moot because the amendment to the claims defines over U.S. Patent No. 6,357,232. The Examiner notes however, that the declaration would have been insufficient because: when the unclaimed subject matter of a reference is applicant's own invention, applicant may overcome a prima facie case based on the patent, ** U.S. patent application publication>, < or international application publication, by showing that the disclosure is a description of applicant's own previous work. Such a showing can be made by proving that the patentee, or ** the inventor(s) of the U.S. patent application publication or the international application publication, was associated with applicant (e.g. worked for the same company) and learned of applicant's invention from applicant. In re Mathews, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969). In the situation where one application is first filed by inventor X and then a later application is filed by X & Y, it must be proven that the joint invention was made first, was thereafter described in the sole applicant's patent, or ** was thereafter described in the sole applicant's U.S. patent application publication or international application publication, and then the joint application was filed. In re Land, 368 F.2d 866, 151 USPQ 621 (CCPA 1966). In the instant case, there is insufficient proof that the joint invention of the instant application was made first. See MPEP 2136.05.

Priority

2. The Examiner acknowledges the Applicant's letter of January 9, 2002 requesting a corrected filing date. The Office is addressing the matter.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 2, 5, 8, 9-12 and 14-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In line 6, claim 1 recites, *"wherein displacement of the second pedal produces a pre-determined deceleration rate followed by at least one user selected (i) pre-determined deceleration rate or (ii) constant velocity of the work machine"*. The recitation of the second predetermined deceleration rate is not supported in the specification. See Figure 3b, when the user's foot is removed from the pedal (which would constitute a user selection) then a constant velocity occurs. Regarding claim 8, there is not support in the specification for a second pedal that both controls the deceleration as claimed and the rearward movement. Control of the rearward movement is disclosed as an alternate embodiment (see page 8, lines 13-27.) Regarding claim 10, as previously indicated in the first office action, there is insufficient support in the specification for the manner in which pedal

displacement can be used to control the jerk of the vehicle. Additionally, based on the amendment, there is no support in the specification for a combination of both acceleration or deceleration and jerk. Regarding claims 14 and 15, the first pedal is not coupled to the brake, it is the second pedal, and as such there is not support in the specification for the first pedal coupled to the brake (see page 5, lines 1-9.)

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 2, 5, 8, 9-12 and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 9 recites "a sensor operatively coupled with said first pedal and said second pedal. The grammatical construction is such that it appears that the Applicant is claiming one sensor coupled to both the first and second pedals. There is not one to one correspondence between the claim limitation and the disclosed invention, and as such the scope of the claim is unclear. Based on the specification, (see Figure 2 and p5, lines 10-14) each pedal has its own sensor. Additionally regarding claims 1 and 2, the recitation of "a velocity aspect" in line 13 claim 1 is unclear, and "vehicle acceleration or vehicle deceleration" in claim 2 is unclear, because both acceleration and deceleration were previously recited, and the double inclusion is confusing.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 2, 5, 8-12, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyerle (US 5,890,982.) Meyerle teaches an operator interface system for a work machine operable for acceleration or deceleration in either a forward or reward direction (Figure 1, element 108.) Also taught are first and second pedals (6,7) and an electronic controller (5) adapted to control a velocity aspect of the work machine. Meyerle is silent regarding the use of sensors coupled to the pedals to output displacement signals. The Examiner takes Official Notice that it is old and well known in the pedal art to include displacement sensors to interface with electronic control devices. It would have been obvious to one having ordinary skill in the art at the time of the invention to include displacement sensors with the pedals of Meyerle in order to complete the interface with the electronic controller. The first pedal controls acceleration and the second pedal controls deceleration (see col. 3, lines 30-47.) Additionally each of the pedals includes a user selected constant velocity which follows the initial acceleration or deceleration (see col. 3, lines 30-35 for the second pedal, and Figure 6g and col. 3, lines 48-67 and col. 5, line 15.) Regarding claim 5, the first pedal controls the forward movement of the car, (if the gear change is in F.) Regarding claim 8, as broadly claimed, if the shift change is in reverse, then the brake pedal controls the reward movement, in that it controls the deceleration in the reward direction. Regarding claims 9 and 13, the controller is programmable and includes mapping structures (as taught in col. 2 and lines 1-5 and Figure 6f.) Regarding claim 14, as best understood, the brake

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pedal is operatively connected to the second pedal (see col. 3, line 36-40.) Regarding claim 11, also taught is a maximum speed control (see col. 4, line 54, maximum engine speed is selectable.) Regarding claim 10, as best understood, jerk is controlled (see col. 6, lines 19-41.) As taught throughout, the prime mover is a hydrostatic transmission, or continuously variable.

Response to Arguments

9. Applicant's arguments filed November 3, 2003 have been fully considered but they are not persuasive. The Examiner notes, that as claimed, each of the first and second pedals does not have to be capable of producing both of the responses indicated by ii) and i) in claim 1 as amended. In each case the acceleration pedal and deceleration pedal of Meyerle produce the required respective acceleration or deceleration, and the constant velocity.

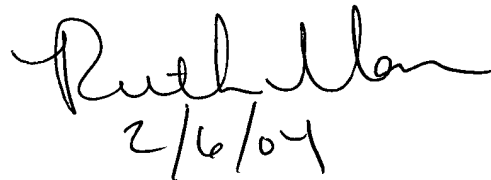
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 703-306-5956. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RI
February 6, 2004

Ruth Ilan
Examiner
Art Unit 3616



2/6/04